

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD
Writ Petition No.16779 of 2005

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Between:
P. Raghavender
... Petitioner

And

The Hon'ble High Court of Andhra Pradesh
Through its Registrar (Vigilance) and others.
... Respondents

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:: ORDER ::
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Counsel for the Petitioner: Shri D. Prakash Reddy, Senior
Advocate assisted by
Sri A.K. Jayaprakash Rao

Counsel for Respondent No.1: Shri C.V. Nagarjuna Reddy
Counsel for Respondents 2 and 3: Government Pleader for Home

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August , 2006
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Per G.S. Singhvi, CJ

This petition is directed against G.O.Ms.No.99, Law (LA & J.SC.F) Department, dated 25-7-2005 as amended on 30-7-2005, whereby the Government of Andhra Pradesh retired the petitioner, who was a member of the Andhra Pradesh State Higher Judicial Service, on attaining the age of 58 years by invoking proviso to Section 3 (1-A) of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 (for short, the Act').

The petitioner's date of birth is 11-7-1947. He joined judicial service of the State of Andhra Pradesh as District Munsif on 16-8-1976. He was promoted as Sub-Judge on 31-8-1987, as District and Sessions Judge Grade-II with effect from 6-1-1992 and as District and Sessions Judge, Grade-I with effect from 8-4-2002. In terms of the substantive part of Section 3 (1A) of the Act, as amended on 22-7-1998, he would have retired from service on 31-7-2007, but, on the recommendations made by High Court, the State Government issued G.O.Ms.No.99 dated 25-7-2005 for his compulsory retirement with effect from 31-7-2005. Subsequently, that G.O. was amended by another G.O. dated 30-7-2005.

The petitioner has challenged the order of retirement on the following grounds:

- 1) In terms of Article 235 of the Constitution, the decision to retire a member of the Andhra Pradesh State Higher Judicial Service can be taken only by the Full Court of the High Court and not by the Committee of Judges and, therefore, the G.O. issued by the State Government on the recommendations of the Administrative Committee of the High Court is liable to be

declared as nullity.

- 2) The recommendations made by the Administrative Committee of the High Court, which led to the issuance of the impugned G.O. are liable to be quashed because the procedure prescribed under Rule 9 read with Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, 'the 1991 Rules') was not followed.
- 3) There is no adverse remark in his service record and no tangible material was available before the Administrative Committee which could justify formation of an opinion that he was not fit to be continued in service till the attaining of 60 years age.

In the counter-affidavit filed on behalf of the High Court by Shri S. Sivaiah Naidu, Registrar (Vigilance), it has been averred that the Committee of Judges recommended the petitioner's retirement at the age of 58 years because on an overall assessment of his service record, he was not found fit to be continued in service up to the age of 60 years. Accordingly, the State Government issued G.O.Ms.No.99 dated 25-7-2005, which was subsequently amended by G.O.Ms.No.103, dated 30-7-2005. The stand of the High Court is that non-extension of the petitioner's service beyond 58 years age on the ground of lack of continued utility cannot be equated with compulsory retirement imposed as a measure of penalty under the 1991 Rules and, therefore, it was not necessary to follow the procedure prescribed under Rule 20 read with Rule 9 of those Rules. In the counter-affidavit, a reference has been made to Resolution dated 12-6-1974 passed by the Full Court of the High Court whereby the Chief Justice

was authorized to constitute committees for convenience of administration to deal with every subject and it has been averred that in furtherance of that resolution, the Chief Justice constituted the Committees of Judges to review the records of the officers for the purpose of determining their continued utility for service and, therefore, the recommendations of the Committee of Judges will be deemed to be the recommendations of the High Court.

In a separate affidavit filed on behalf of Government of Andhra Pradesh, Shri T. Madan Mohan Reddy, Secretary to Government, Law (LA & J SC. F) Department, has averred that the State Government issued G.O.Ms.No.99 dated 25-7-2005 as per the recommendations of the High Court.

At this stage, we consider it proper to mention that during the course of hearing of the writ petition, Shri C.V. Nagarjuna Reddy, Advocate appearing on behalf of the High Court made a request on 14-2-2006 for grant of time to seek instructions. On the next date i.e. 22-2-2006, he made a statement that if the petitioner makes fresh representation for review of his premature retirement from service, the High Court will objectively re-consider the same and take appropriate decision. After taking cognizance of his statement, the Court passed the following order:

“Sri A.K. Jayaprakash Rao for the petitioner.

Sri C.V. Nagarjuna Reddy for respondent No.1.

Sri C.V. Nagarjuna Reddy, learned counsel for the respondent – High Court, who had sought adjournment on the last date of hearing to seek instructions, says that if the petitioner makes a fresh representation for review of his premature retirement from service, the High Court will objectively re-consider the same and take appropriate action.

In view of the statement made by Sri C.V. Nagarjuna Reddy, we direct the petitioner to make appropriate

representation to the High Court for reconsideration of his case of premature retirement, and hope that the same would be dealt with and decided within a period of one month of its presentation.

List the case for further consideration on April 3, 2006.”

In furtherance of the aforementioned order, the petitioner made representation for reconsideration of his case for compulsory retirement, but the same was rejected by the Committee of Judges. The decision of the committee was conveyed to the petitioner vide Roc.No.4048/2005-B.Spl. dated 12-4-2006. He then amended the writ petition and prayed for quashing that communication.

Shri D. Prakash Reddy, Senior Advocate appearing for the petitioner argued that the recommendations made by the Administrative Committee cannot be treated as the recommendations made by the High Court and, therefore, the entire exercise undertaken by the respondents for compulsory retirement of the petitioner is liable to be nullified on the ground of violation of Article 235 of the Constitution. He pointed out that in terms of the proviso to Section 3(1-A) of the Act, a member of the Andhra Pradesh State Higher Judicial Service can be retired at the age of 58 years only after following the procedure prescribed under the 1991 Rules for compulsory retirement and argued that the impugned G.Os. are liable to be quashed because neither any enquiry was held against the petitioner under the 1991 Rules nor he was given opportunity of hearing. Sri Reddy submitted that compulsory retirement is one of the major penalties specified in Rule 9 and argued that the petitioner could not have been retired without following the procedure prescribed under Rule 20 of the 1991 Rules, which envisages issuance of charge sheet, appointment of enquiry officer, recording of evidence of the parties, submission of enquiry report, consideration

thereof by the disciplinary authority, supply of copy of enquiry report to the delinquent with an opportunity to him to make a representation against the procedure of enquiry as well as the merits of the findings recorded by the enquiring authority. Learned counsel then argued that even if the court comes to the conclusion that the procedure prescribed under the 1991 Rules is not required to be followed for compulsorily retiring a member of the State Higher Judicial Service at the age of 58 years, the recommendations made by the Administrative Committee and the consequential G.Os. issued by the State Government should be declared illegal and quashed because there is no adversity in the service record of the petitioner and his annual confidential reports, which could justify formation of an opinion that he was not fit to be continued in service beyond the age of 58 years. In support of this argument, Shri Reddy relied on the judgments of the Supreme Court in **Baldev Raj Chadha v. Union of India**^[1], **Brij Bihari Lal Agarwal v. High Court of M.P.**^[2], **The Registrar, High Court of Madras v. R. Rajaiah**^[3] and **Ramesh Chandra Acharya v. Registrar, High Court of Orissa and another**^[4]. Shri Reddy also assailed the rejection of the petitioner's representation by arguing that the decision conveyed to his client vide proceedings dated 12-4-2006 is totally bereft of reasons. He emphasised that while deciding the representation made by the petitioner, the High Court was duty bound to objectively consider his entire record and assign reasons for not accepting his prayer for reinstatement.

Shri C.V. Nagarjuna Reddy, learned counsel for the High Court relied on the judgment of the Supreme Court in **High Court of Judicature at Bombay v. Shirish Kumar Rangrao Patil and**

another^[5] and argued that the recommendations made by the Administrative Committee of the High Court will be deemed to be the recommendations of the Full Court because in furtherance of the authorization given by the Full Court, the Chief Justice had constituted separate committees to look into the records of the officers of the Andhra Pradesh State Higher Judicial Service as well as Andhra Pradesh State Judicial Service for the purpose of determination of their continued utility. On merits, Shri C.V. Nagarjuna Reddy submitted that the Administrative Committee had, after making a comprehensive evaluation of the service record of the petitioner including the annual confidential reports, recommended his retirement at the age of 58 years and then argued that such decision cannot be annulled merely because on judicial side there is a possibility of forming a different opinion. He further argued that in exercise of power under Article 226 of the Constitution, the High Court cannot sit in appeal over the recommendations made by the Administrative Committee not to continue the petitioner in service beyond the age of 58 years. Learned counsel pointed out that there were several complaints against the petitioner casting adverse reflection on his integrity and conduct and submitted that the same were rightly considered by the Administrative Committee while recommending his compulsory retirement at the age of 58 years and also for rejecting his representation.

We have given serious thought to the respective arguments and carefully perused the record produced by Sri C.V. Nagarjuna Reddy.

At the outset, we deem it proper to take cognizance of Resolution dated 12-6-1974 passed by the Full Court of the High Court whereby the Chief Justice was authorized to constitute

Committees of Judges to deal with various subjects. The same reads as under:

“Resolved that the Hon’ble the Chief Justice be authorized to constitute committees, for the convenient administration, to deal with the several subjects and also to reconstitute them as and when he deems it necessary.”

In furtherance of the aforementioned resolution, the Chief Justice has, from time to time, constituted and re-constituted Committees of Judges to assess the records of the officers of the Andhra Pradesh State Higher Judicial Service and the Andhra Pradesh State Judicial Service for the purpose of determining their continued utility.

In the backdrop of the above facts, we shall now determine whether the recommendations made by the Administrative Committee could be treated as recommendations of the High Court for the purpose of Article 235 of the Constitution and whether the State Government committed any illegality by accepting the recommendations of the Administrative Committee.

Article 235 which finds place in Chapter VI of the Constitution and which the control over the subordinate judiciary vests in the High Court reads as under:

“235. Control over subordinate Courts:

The control over district Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.”

The width and amplitude of the word 'control' appearing in Article 235 of the Constitution has been considered in various cases and it has been held that transfers, promotions, confirmation, fixation of pay, grant of Selection Grade, retirement from service including compulsory/premature retirement, and various disciplinary matters fall within the ambit and reach of Article 235 of the Constitution. In **Chief Justice, A.P. v. L.V.A. Dikshitulu**^[6], the Constitution Bench of the Supreme Court referred to several judicial precedents on the subject and culled out the following propositions:

“(a)

(i) Disciplinary jurisdiction and a complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal, reduction in rank of District Judges, the initial posting and promotion to the cadre of District Judges. In the exercise of this control, the High Court can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal, subject, however, to the conditions of service, and a right of appeal, if any, granted thereby and to the giving of an opportunity of showing cause as required by Article 311(2).

(ii) In Article 235, the word 'control' is accompanied by the word “vest” which shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court being exclusive, and not dual, an inquiry into the conduct of a member of the judiciary can be held by the High Court alone and no other authority. {**State of West Bengal v. Nripendra Nath Bagchi** (AIR 1966 SC 447), **Shamsher Singh v. State of Punjab**, (1975) 1 SCR 814 = AIR 1974 SC 2192); **Punjab and Haryana High Court v. State of Haryana** (subnom Narendra Singh

Rao) (1975) 3 SCR 365 : (AIR 1975 SC 613)}

(iii) Suspension from service of a member of the judiciary with a view to hold a disciplinary inquiry.

- (b) Transfers, promotions and confirmation of such promotions, of persons holding posts in the judicial service inferior to that of District Judge. **{State of Assam v. S.N.Sen (1971)2 SCC 889: (AIR 1972 SC 1028) State of Assam v. Kuseswar Saikia (1970) 2 SCR 928 : (AIR 1970 SC 1616)}**.
- (c) Transfer of District Judges **(State of Assam v. Ranga Muhammad (AIR 1967 SC 903); Chandra Mouleshwar v. Patna High Court (AIR 1970 SC 370)**.
- (d) Recall of District Judges posted on ex-cadre posts or on deputation on administrative posts, **(State of Orissa v. Sudhansu Sekhar Misra (1968) 2 SCR 154 : (AIR 1968 SC 647)**.
- (e) Award of selection grade to the members of the judicial service, including District Judges, being their further promotion after their initial appointment to the cadre, **(State of Assam v. Kuseswar Saikia {AIR 1970 SC 1616}**.
- (f) Confirmation of District Judges, who have been on probation or are officiating, after their initial appointment or promotion by the Governor to the cadre of District Judges under Article 233, **(Punjab and Haryana High Court v. State of Haryana – AIR 1975 SC 613)**.
- (g) Premature or compulsory retirement of Judges of the District Courts and of Subordinate Courts **{State of U.P. v. Batuk Deo Pati Tripathi {(1978) 2 SCC 102}**.”

In view of the aforementioned judgments, it must be held that premature or compulsory retirement of the members of the Andhra Pradesh State Higher Judicial Service and the Andhra Pradesh State Judicial Service fall within the ambit of Article 235 of the Constitution and the High Court can legitimately recommend compulsory

retirement of an officer before attaining the age of superannuation.

A reading of the plain language of Article 235 suggests that control over district courts and courts subordinate thereto envisaged under that Article is to be exercised by the High Court as a body corporate, there is nothing in the scheme of Chapter VI of the Constitution generally and Article 235 in particular from which it can be inferred that assignment/ delegation of High Court's functions in relation to various matters concerning the officers of the courts subordinate to the High Court to a smaller body or Committee of Judges is impermissible. The involvement of all Judges in the decision making process and administrative matters relating to judicial officers may have been possible in the formative period and developing stages of judicial hierarchy, but in the changed scenario, it is extremely difficult, if not impossible, for all the Judges to frequently meet as a body corporate to deal with such matters. The proliferation of litigation in the Courts at various levels and consequential increase in the strength of judicial manpower at the grassroot level and district level necessary to meet the ever growing demand for quick dispensation of justice has made the task of effective exercise of control by the High Courts over the subordinate judiciary extremely complicated and difficult. Within the High Court also, the administrative work has increased manifold. For effective functioning of the institution, the Chief Justice and all other Judges have to devote considerable time after Court hours to deal with different aspects of administration. Therefore, the High Court, as a body corporate, cannot deal with all administrative matters relating to the members of judicial services. As a result of this, assignment/delegation of administrative functions of the High Court to smaller constituents or Committees of Judges has become absolutely

imperative for effective and efficient exercise of control envisaged under Article 235 of the Constitution.

In **State of U.P. v. Batuk Deo Pati Tripathi**^[7], the Constitution Bench of the Supreme Court considered the question whether the power to prematurely retire a member of the Higher Judicial Service could be assigned to a Committee of Judges. The facts of that case were that Batuk Deo Pati Tripathi who had joined the judicial service of the State of Uttar Pradesh as Munsif in 1948 and was promoted up to the rank of District Judge, was retired on attaining the age of 50 years. He challenged the same on various grounds including the one that the recommendation made by a Committee of Judges could not have been made basis for his premature retirement. The Division Bench of the High Court, which heard the matter, made a reference to the Larger Bench to consider the question relating to interpretation of Article 233 read with Article 235 of the Constitution. The majority of the Full Bench held that the recommendation made by the Committee of Judge cannot be treated as decision of the High Court and, therefore, the same could not be made basis for premature retirement of the appellant. The majority further held that circulation of recommendation of the Committee did not amount to consultation with the Full Court. On appeal, the Constitution Bench of the Supreme Court framed various questions including the one whether the control of the High Court envisaged under Article 235 can be exercised through Committee of Judges. The Constitution Bench referred to provisions of the Constitution, Chapter III of the Allahabad High Court Rules, 1952 and the provisions of Government of India Acts, 1919 and 1935 and observed as under:

“For answering this question it is necessary in the first

place to bear in mind that the power of control over the subordinate courts which is vested in the High Courts comprises such numerous matters, often involving consideration of details of the minutest nature, that if the whole High Court is required to consider every one of those matters, the exercise of control instead of becoming effective will tend to cause delay and confusion in the administration of justice in the State. A construction which will frustrate the very object of the salient provisions contained in Article 235 ought, is so far as possible, to be avoided. The control vested in the High Courts by that article comprehends, according to our decisions, a large variety of matters like transfers, subsequent postings, leave, promotions other than initial promotions, imposition of minor penalties which do not fall within Article 311, decisions regarding compulsory retirements, recommendations of imposition of major penalties which fall within Article 311, entries in character rolls and so forth. If every Judge is to be associated personally and directly with the decision on every one of these matters, several important matters pertaining to the High Court's administrative affairs will pile into arrears like court arrears. In fact, it is no exaggeration to say that the control will be better and more effectively exercised if a smaller committee of Judges has the authority of the court to consider the manifold matters falling within the purview of Article 235. Bearing in mind therefore the nature of the power which that article confers on the High Courts, we are of the opinion that it is wrong to characterize as 'delegation' the process whereby the entire High Court authorizes a Judge or some of the Judges of the Court to act on behalf of the whole Court. Such an authorisation effectuates the purpose of Article 235 and indeed without it the control vested in the High Courts over the subordinate courts will tend gradually to become lax and ineffective. Administrative functions are only a part, though an important part, of the High Court's constitutional functions. Judicial functions ought to occupy and do in fact consume the best part of a Judge's time. For balancing these two-fold functions it is inevitable that the administrative duties should be left to be discharged by some on behalf of all the Judges. Judicial functions brook no such

sharing of responsibilities by any instrumentality.”

(emphasis supplied)

The Constitution Bench then referred to Judicial Review of Administrative Action by S.A. De Smith and observed:

“We have pointed out above that the amplitude of the power conferred by Article 235, the imperative need that the High Courts must be enabled to transact their administrative business more conveniently and an awareness of the realities of the situation, particularly of the practical difficulties involved in a consideration by the whole court, even by circulation, of every day-to-day matter pertaining to control over the District and subordinate Courts, lead to the conclusion that by rules framed under Article 235 of the Constitution the High Courts ought to be conceded the power to authorize an Administrative Judge or an Administrative Committee of Judges to act on behalf of the Court. Accordingly, we uphold the minority judgment of the Full Bench that

Rule 1 of Chapter III of the 1952 Rules framed by the Allahabad High Court is within the framework of Article 235. The recommendation made by the Administrative Committee that the respondent should be compulsorily retired cannot therefore be said to suffer from any legal or constitutional infirmity.”

In **High Court of Judicature at Bombay v. Sirish Kumar Rangrao Patil** (supra), the Supreme Court examined challenge to the constitutionality of resolution passed by the Bombay High Court whereby the power of taking disciplinary action was delegated to the Committee of Judges. The factual matrix of that case shows that a departmental enquiry was instituted against the respondent on the charge of having demanded illegal gratification for passing an order of injunction. The enquiry was conducted under the supervision of a Committee of five Judges. The Committee accepted report of the

Enquiry Officer, who found the respondent guilty of the charge and recommended to the Government that he may be dismissed from service. On receipt of the recommendation of the Committee, the Government issued the necessary order. One of the grounds on which the respondent challenged the order of dismissal and which found favour of the Division Bench of the High Court was that the High Court's power of control envisaged under Article 235 could not have been exercised by the Committee of Judges. The Supreme Court reversed the decision of the High Court and laid down the following propositions:

“a) It would thus be settled law that the control of the subordinate judiciary under Article 235 is *vested* in the High Court. After the appointment of the judicial officers by the Governor, the power to transfer, maintain discipline and keep control over them vests in the High Court. The Chief Justice of the High Court is first among the Judges of the High Court. The action taken is by the High Court and not by the Chief Justice in his individual capacity, nor by the Committee of Judges. For the convenient transaction of administrative business in the Court, the Full Court of the Judges of the High Court generally passes a resolution authorising the Chief Justice to constitute various committees including the committee to deal with disciplinary matters pertaining to the subordinate judiciary or the ministerial staff working therein. Article 235, therefore, relates to the power of taking a decision by the High Court against a member of the subordinate judiciary. Such a decision either to hold an enquiry into the conduct of a judicial officer, subordinate or higher judiciary, or to have the enquiry conducted through a District or Additional District Judge etc. and to consider the report of the enquiry officer and to take follow-up action and to make appropriate recommendation to the Disciplinary Committee or to the Governor, is entirely of the High Court which *acts* through the Committee of Judges authorised by the Full Court. Once a resolution is passed by the Full Court of the High Court, there is no further *necessity* to refer the matter again to the Full Court

while taking such procedural steps relating to control of the subordinate judiciary.

b) The delegation of the functions of the High Court in respect of punishment of judicial officers' is an exception of width and of wide amplitude to cover within its ambit the power to take a decision by the Committee from the stage of initiation of disciplinary proceedings, if necessary, till its logical end, viz. recommendation is by the High Court, the controlling authority under Article 235 of the Constitution. Therefore, it is difficult to accept the contention of Shri Batra that the delegation is only for imposition of punishment on judicial officers. In fact, the High Court has no power to impose any punishment by itself. The appointing authority, viz., the Governor is the competent authority under the Constitution to impose punishment in accordance with the rules framed for the purpose. Therefore, the entire gamut of procedural steps of disciplinary action is by the High Court which is the controlling authority through the Committee constituted in that behalf by the Chief Justice of the High Court."

The same view has been expressed in **Nawal Singh v. State of U.P.** ^[8].

Following the ratio of the aforementioned judgments, we hold that the recommendations made by the Administrative Committee, which was constituted by the Chief Justice in furtherance of resolution dated 12-6-1974, for compulsory retirement of the petitioner will be deemed to have been made by the High Court as a body corporate for the purpose of Article 235 of the Constitution and the State Government did not commit any illegality by issuing G.O.Ms.No.99, dated 25-7-2005 and G.O.Ms.No.103 dated 30-7-2005.

The next question which needs to be decided is whether the petitioner's compulsory retirement from service is liable to be nullified

on the ground of violation of Section 3(1-A) of the Act.

For deciding the aforementioned question, it will be useful to notice the background in which Section 3 (1-A) was inserted in the Act, which in its unamended form provided for retirement of all officers including the judicial officers at the age of 58 years. In **All India Judges' Assn. v. Union of India**^[9], the Supreme Court considered various issues relating to conditions of services of judicial officers and gave the following directions:

- “(i) An All India Judicial Service should be set up and the Union of India should take appropriate steps in this regard.
- (ii) Steps should be taken to bring about uniformity in designation of officers both in civil and the criminal side by March 31, 1993.
- (iii) Retirement age of judicial officers be raised to 60 years and appropriate steps are to be taken by December 31, 1992.
- (iv) As and when the Pay Commissions/Committees are set up in the States and Union territories, the question of appropriate pay scales of judicial officers be specifically referred and considered.
- (v) A working library at the residence of every judicial officer has to be provided by June 30, 1992. Provision for sumptuary allowance as stated has to be made.
- (vi) Residential accommodation to every judicial officer has to be provided and until State accommodation is available, government should provide requisitioned accommodation for them in the manner indicated by December 31, 1992. In providing residential accommodation, availability of an office room should be kept in view.
- (vii) Every District Judge and Chief Judicial Magistrate should have a State vehicle, judicial officers in sets of five should have a pool vehicle and others would be entitled to suitable loans to acquire two wheeler automobiles within different time limits as specified.

(viii) In-service Institute should be set up within one year at the Central and State or Union territory level.”

Feeling aggrieved by the aforementioned directions given by the Supreme Court, the Union of India and various State Governments filed review petitions. On the issue of enhancement of superannuation age, it was pleaded that the Supreme Court had erred in drawing distinction between the members of the judicial service and those of other services and further that the Court was not justified in giving direction in a policy matter which lay within the exclusive domain of the executive. A three Judges Bench of the Supreme Court considered various objections in **All India Judges' Assn. v. Union of India**^[10]. While reiterating that the judicial services were not comparable with other services and confirming the directions given in the earlier judgment for enhancing the age of superannuation of the judicial officers to 60 years, the Supreme Court administered the following words of caution:

“There is, however, one aspect we should emphasise here. To that extent the direction contained in the main judgment under review shall stand modified. The benefit of the increase of the retirement age to 60 years, shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts and the evaluation shall be made on the basis of the judicial officer's past record of service, character rolls, quality

of judgments and other relevant matters.”

The Supreme Court then gave the following directions regarding the procedure to be followed by the High Courts in the matter of extension of the age of superannuation of the judicial officers up to the age of 60 years:

“The High Court should undertake and complete the exercise in case of officers about to attain the age of 58 years well within time by following the procedure for compulsory retirement as laid down in the respective Service Rules applicable to the judicial officers. Those who will not be found fit and eligible by this standard should not be given the benefit of the higher retirement age and should be compulsorily retired at the age of 58 by following the said procedure for compulsory retirement. The exercise should be undertaken before the attainment of the age of 58 years even in cases where earlier the age of superannuation was less than 58 years. It is necessary to make it clear that this assessment is for the purpose of finding out the suitability of the concerned officers for the entitlement of the benefit of the increased age of superannuation from 58 years to 60 years. It is in addition to the assessment to be undertaken for compulsory retirement and the compulsory retirement at the earlier stage/s under the respective Service Rules.”

After taking note of the two judgments of the Supreme Court, the Government of Andhra Pradesh amended Section 3 (1-A) of the Act. The same reads as under:

“Notwithstanding anything contained in sub-section (1), every member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that any such member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State

Judicial Service may be compulsorily retired from service on the afternoon of the last day of the month in which he attains the age of fifty eight years if he is not found fit and eligible to be continued in service by the High Court of Andhra Pradesh State Judicial Service may be compulsorily retired from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years if he is not found fit and eligible to be continued in service by the High Court of Andhra Pradesh on an assessment and evaluation of the record of such member for his continued utility well within time before he attains the age of fifty-eight years by following the procedure for compulsory retirement under the rules applicable to him;

Explanation:- The assessment and evaluation by the High Court of Andhra Pradesh for the purpose of this sub-section is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken at any other time under the relevant rules applicable to such members of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service".

On a reading of the plain language of the above reproduced provision, the argument of Sri Prakash Reddy that the petitioner could have been retired under proviso to Section 3(1-A) of the Act only after following the procedure prescribed under the 1991 Rules for imposing the penalty of compulsory retirement appears attractive, but on a deeper examination, we do not find any merit in it.

In terms of substantive part of Section 3 (1-A), a member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service is entitled to continue in service up to the age of 60 years. Proviso to this section postulates retirement of a member of service at the age of 58 years if, on an assessment and evaluation of his record, the High Court comes to the conclusion that he is not fit and eligible to be continued in service beyond the age of 58 years.

Explanation to this rule clarifies that the assessment and evaluation by the High Court for the purpose of sub-section (1-A) of Section 3 is in addition to and independent of the assessment for compulsory retirement which may be undertaken at any other time under the relevant rules.

In service jurisprudence, the expression “compulsory retirement” has two connotations. Under various disciplinary rules, compulsory retirement is one of the penalties which can be inflicted on a delinquent employee if he is found guilty of misconduct. Such penalty cannot be inflicted only after following the procedure prescribed under the relevant rules and the principles of natural justice. The Central Government/ State Government/appropriate authority can also retire an employee on attaining a particular age or after completing the specified period of qualifying service, if the competent authority, on an evaluation and assessment of the record of the employee forms an opinion that he is no longer fit to be continued in service or that he has become deadwood or that his retention in service is no longer in public interest. The latter category of retirement cannot be treated as punitive

per se. In **Bishwanath Prasad Singh v. State of Bihar**^[11], the Supreme Court highlighted the distinction between two concepts of compulsory retirement in the following words:

“Compulsory retirement in service jurisprudence has two meanings. Under the various disciplinary rules, compulsory retirement is one of the penalties inflicted on a delinquent government servant consequent upon a finding of guilt being recorded in disciplinary proceedings. Such penalty involves stigma and cannot be inflicted except by following procedure prescribed by the relevant rules or consistently with the principles of natural justice if the field for inflicting such penalty be not occupied by any rules. Such compulsory retirement in

the case of a government servant must also withstand the scrutiny of Article 311 of the Constitution. Then there are service rules, such as Rule 56(j) of the Fundamental Rules, which confer on the Government or the appropriate authority, an absolute (but not arbitrary) right to retire a government servant on his attaining a particular age or on his having completed a certain number of years of service on formation of an opinion that in public interest it is necessary to compulsorily retire a government servant. In that case, it is neither a punishment nor a penalty with loss of retiral benefits. Compulsory retirement in public interest under service rules is like premature retirement. It does not cast any stigma. The government servant shall be entitled to the pension actually earned and other retiral benefits. So long as the opinion forming basis of the order for compulsory retirement in public interest is formed bona fide, the opinion cannot be ordinarily interfered with by a judicial forum. Such an order may be subjected to judicial review on very limited grounds such as the order being mala fide, based on no material or on collateral grounds or having been passed by an authority not competent to do so. The object of such compulsory retirement is not to punish or penalise the government servant but to weed out the worthless who have lost their utility for the administration.”

If the expression ‘by following the procedure for compulsory retirement under the rules applicable to him’ used in the proviso to Section 3(1-A) is read in the light of what we have discussed above, it becomes clear that the same does not impose an obligation on the High Court to follow the procedure contained in the 1991 Rules before recommending retirement of an officer at the age of 58 years. It merely ordains that if there exists any rule for premature retirement of an employee, then the said rule should be complied with before ordering retirement of an officer at the age of 58 years. In its very nature, compulsory retirement envisaged under proviso to Section 3 (1-A) is non-punitive in character because decision in that regard has

to be taken on the basis of an assessment and evaluation of the service record of the officer concerned. Therefore, the requirement of following the procedure prescribed under Rule 20 of the 1991 Rules cannot be read as implicit in proviso to Section 3(1-A) of the Act.

We are further of the view that if proviso to Section 3 (1-A) of the Act is interpreted in the manner suggested by the learned counsel for the petitioner, the purpose of substantive portion of the proviso will be defeated because the power to compulsorily retire an officer by way of punishment can be exercised by the competent authority at any time by following the procedure prescribed under the 1991 Rules.

What we have observed above is fully supported by the judgment of this Court in **Kotipally Murali Mukunda Rao v. State of A.P.** ^[12]. The facts of that case were that the petitioner who was a member of judicial service of the State of Andhra Pradesh was compulsorily retired on attaining the age of 58 years. Writ Petition No.14670 of 1993 filed by him was dismissed by the Division Bench vide order dated 10-12-1993. However, by taking shelter of sub-section (1-A) of Section 3, which was inserted by Amendment Act of 1998, he filed Writ Petition No.17408 of 1999 for invalidation of his retirement by contending that the decision to retire him was taken without following the procedure prescribed for compulsory retirement. The Division Bench considered the issue in detail, negated the petitioner's challenge and held as under:

“8. The stress laid on the words "following the procedure for compulsory retirement under the Rules applicable" is, if we may say so, rather misconceived. The premise on which the learned counsel for the petitioner has built up his argument rests on a wrong assumption as to the real purport and nuances of that phraseology. In fact, the same language is used in the judgment of the Supreme

Court. The real emphasis, in our view, is on the word 'procedure'. The legislative injunction in tune with the Supreme Court's ruling is that the procedure laid down in the Service Rules or the procedure evolved by administrative instructions if any on the subject should be followed. It does not mean that substantive requirements of the rule relating to compulsory retirement such as the fundamental conditions for initiating a move to compulsorily retire a public servant can be regarded as the 'procedure for compulsory retirement'. For instance, the rule contained in the proviso to Rule 44 requiring the appointing authority to give a notice in writing three months ahead of the date on which the employee is required to retire or to tender three months' pay in lieu of such notice, is a part of procedural requirement. It is also possible to visualise the issuance of certain administrative instructions to provide for modalities for assessment of the performance and utility of the public servant for the purpose of taking a decision under Rule 44. For instance, there may be some instructions as to the materials to be considered by the Review Committee or obtaining of reports from any administrative superiors. Such instructions may be regarded as part of the procedural gamut for consideration of cases of compulsory retirement under Rule 44.

9. It would lead to incongruous and contradictory results if we consider the expression "procedure for compulsory retirement" as to mean that the entire Rule 44 of A. P. Revised Pension Rules is to be transplanted into sub-section (1-A) of Section 3. Completion of 33 years of qualifying service will be wholly out of place in the context of sub-section (1-A) which as we have already clarified is nothing but reiteration of the principle laid down by the AIJA case (supra). 'Public interest' as such cannot also be imported into this provision, though very often, the considerations which go into the assessment of fitness and continued utility as member of the Judicial Service coincide with the considerations of public interest. The expression 'procedure for compulsory retirement' cannot be divorced from the context and it cannot run counter to the mandate of opening clause of the proviso. The proviso which is in the nature of an

exception or qualification to the main provision ordains that a Judicial Officer should be compulsorily retired from service on the last date of the month on which he attains the age of 58 years when once the High Court on assessment reaches a decision that the Officer does not have the continued utility to remain in service and therefore, he is unfit to continue beyond 58 years. The concept of completion of 33 years is wholly alien to the proviso to sub-section (1-A) which empowers the competent authority to retire a Judicial Officer on attaining the age of 58 years, in case he is found lacking in utility and fitness to continue further in service. The Explanation to sub-section (1-A) dispels any doubts in this regard and eloquently speaks for itself as to what is the true nature and purport of the assessment to be made in terms of the proviso. It is categorically stated therein ---- again in reiteration of the principle laid down by the Supreme Court, that the assessment and evaluation is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken in accordance with the relevant service Rules governing the members of the A. P. Higher Judicial Service and A. P. Judicial Service. This again emphasises that the power conferred under sub-section (1-A) of Section 3 of Act 26 of 1998 is a special power exercisable vis-a-vis the retirement age of Judicial Officers. The entire provision would be unworkable if we endorse the interpretation placed by the learned counsel for the petitioner on the expression "following the procedure for compulsory retirement".

10. At the risk of repetition, we would like to clarify that the 'procedure' contemplated by the proviso does not mean substantive requirement for ordering compulsory retirement under the Service Rules. The procedure for compulsory retirement will only apply 'mutatis mutandis'. In the guise of applying the procedure, the essence and core of the substantive power to compulsorily retire a Judicial Officer on considerations of continued utility and fitness cannot be destroyed. It may be mentioned that what is stated in the Explanation to sub-section (1-A) was also stated by the Division Bench of this Court in Writ Petition No.

14670 of 1993 based on the dicta of the Supreme Court. The petitioner is placed in no better position by reason of the Amendment Act of 1998. Considering the question from every stand point, we have therefore no hesitation in rejecting the contention of the learned counsel for the petitioner.”

The above judgment is, in our considered view, a complete answer to the petitioner’s challenge to the order of retirement on the ground that the procedure prescribed under the 1991 Rules for compulsory retirement had not been followed.

The question which remains to be decided is whether the recommendations made by the Administrative Committee of the High Court and the consequential action taken by the State Government to retire the petitioner at the age of 58 years are vitiated by arbitrariness and whether his case falls within the parameters of judicial review of such cases. An inter-related issue which falls for our consideration is whether the service record of the petitioner and his annual confidential record dossiers contain some adverse material which could justify formation of an opinion that he is no longer fit to be continued in service or that he has outlived utility for the service.

It is settled law that an employee can be retired from service after completing a specified period of service or attaining a particular age if, on an assessment of his service record, work, performance and conduct, the competent authority forms a bona fide opinion that he has outlived utility for service or he has become a deadwood or that his continuance in service is not in public interest. If the action taken by the employer is challenged in a petition filed under Article 226 of the Constitution, the High Court cannot sit in appeal and upset the decision of the competent authority merely because on a reassessment of the record, it is possible to form a different opinion. If, on the other hand, it is found that the decision of the competent

authority is tainted by arbitrariness or mala fides or non-application of mind, the High Court can exercise the power of judicial review and nullify the impugned decision. The High Court can also exercise the power of judicial review if it is found that the service record of the employee does not contain any adversity and no person of reasonable prudence could have formed an opinion for his premature/compulsory retirement from service. In **Baikuntha Nath Das v. Chief Distt. Medical Officer**^[13], a three Judges Bench of the Supreme Court reviewed various judicial precedents on the subject and laid down the following propositions:

- i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
- iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary — in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
- iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter — of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse

remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.”

In **Post and Telegraphs Board v. C.S.N. Murthy**^[14], another Bench of three Judges of the Supreme Court referred to the propositions laid down in the case of **Baikuntha Nath Das** (supra) and held:

“An order of compulsory retirement is not an order of punishment. F.R. 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service if, in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record. No mala fides have been urged in the present case. There was material which showed that the efficiency of the petitioner was slackening in the last two years of the period under review and it is, therefore, not possible for us to fault the conclusion of the department as being mala fide, perverse, arbitrary or unreasonable.”

In **State of Gujarat v. Umedbhai M. Patel**^[15], the Supreme Court upheld the order of Gujarat High Court which quashed the compulsory retirement of the respondent. Their Lordships referred to

the judgment in the case of **Baikuntha Nath Das** (supra) and held:

“(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.”

At this stage, we may also notice the caution administered by the Supreme Court to the High Court in dealing with the judicial officers. In **Bishwanath Prasad Singh v. State of Bihar** (supra), the Supreme Court emphasized the need for fairness and justness in performing the inspection and making the entries in the confidential rolls of the judicial officers and observed:

“The very power to make such entries as have potential

for shaping the future career of a subordinate officer casts an obligation on the High Courts to keep a watch and vigil over the performance of the members of subordinate judiciary. An assessment of quality and quantity of performance and progress of the judicial officers should be an ongoing process continued round the year and then to make a record in an objective manner of the impressions formulated by such assessment. An annual entry is not an instrument to be wielded like a teachers' cane or to be cracked like a whip. The High Court has to act and guide the subordinate officers like a guardian or elder in the judicial family. The entry in the confidential rolls should not be a reflection of personal whims, fancies or prejudices, likes or dislikes of a superior. The entry must reflect the result of an objective assessment coupled with an effort at guiding the judicial officers to secure an improvement in his performance. Entries either way have serious implications on the service career. Hence the need for fairness, justness and objectivity in performing the inspections and making the entries in the confidential rolls."

In **Registrar, High Court of Gujarat v. C.G. Sharma** ^[16], the Supreme Court highlighted the adverse circumstances in which the honest judicial officers are required to work and observed:

"An honest judicial officer is likely to have adversaries in the mofussil courts and if complaints are entertained on trifling matters relating to judicial orders, which may have been upheld by the High Court on the judicial side, no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. If judicial officers are under constant threat of complaint and enquiry on trailing matter and if the High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is, therefore, imperative that the High Court should also take steps to protect its honest officer by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants. The judicial officers

have also to face sometimes quarrelsome, unscrupulous and cantankerous litigations but they have to face them boldly without deviating from the right path and that they are not expected to be overawed by such litigants or fall to their evil designs.”

In the light of the above, we shall now consider whether there was some tangible material before the Administrative Committee which can justify formation of an opinion that the petitioner was not fit to be continued in service up to the age of superannuation i.e., 60 years in terms of substantive part of Section 3(1-A).

The original record produced by the learned counsel for the High Court shows that in its meeting held on 27-6-2005, the Administrative Committee considered the extracts from the service file of the petitioner and the complaints received against him along with the action taken thereon. Extracts from the personal file of the petitioner for the years 1996-2004, which were considered by the Administrative Committee read as under:

EXTRACTS FROM THE PERSONAL FILE:

**1996 II ADDL. DISTRICT AND SESSIONS JUDGE,
RAJAHMUNDRY AND ADDL. DISTRICT AND SESSIONS JUDGE,
MAHBUBNAGAR**

HIGH COURT REVIEW

PERIOD	QUANTITATIVELY	QUALITATIVELY
I PERIOD	a) Very Good	Good
	b) Very Good	Satisfactory
II PERIOD	Very Good	Satisfactory

Work – Quantitative performance is Good; Conduct – Satisfactory.
Sd/- Motilal B. Naik, J.

Work – Good; Conduct and other remarks – Nothing adverse is heard

about him.

Sd/- D.Reddeppa Reddy, J.

Work: Quantitative – Very Good; Qualitative – Good; Conduct – Good; Other remarks – Good and honest Officer.

Sd/- B.Subhashan Reddy, J.

Work – Satisfactory; Conduct – Good;

Sd/- N.Y.Hanumanthappa, J.

Work: Quantitatively Average, Disposals were very good; Conduct – Good; Other remarks – A sincere officer.

Sd/- P.Venkatarama Reddi, J.

1997 ADDL.DISTRICT AND SESSIONS JUDGE, MAHBUBNAGAR

HIGH COURT REVIEW

PERIOD	QUANTITATIVELY	QUALITATIVELY
I PERIOD	Very Good	Good
II PERIOD	Short period	No review

Work: Quantitatively – Very Good; Qualitatively – Good; Conduct – Good.

Sd/- R.M. Bapat, J.

Work and Conduct – Satisfactory

Sd/-Motilal B.Naik, J.

Work and Conduct – Good

Sd/-B.Subhashan Reddy, J.

Work and Conduct – Good

Sd/-N.Y.Hanumanthappa,J.

**1998 SPECIAL JUDGE FOR ESSENTIAL COMMODITIES ACT-
CUM-III ADDL.METROPOLITAN SESSIONS JUDGE,
HYDERABAD.**

HIGH COURT REVIEW

PERIOD	QUANTITATIVELY	QUALITATIVELY
I PERIOD	Very Good	Satisfactory
II PERIOD	Good	Satisfactory

Work and Conduct – Good;

Sd/- R.M. Bapat, J.

Work and Conduct – Satisfactory Sd/-Motilal B.Naik, J.
Work – Satisfactory; Conduct – Good; Other remarks: No
adverse. Sd/-N.Y.Hanumanthappa,J.

Work and Conduct – Satisfactory; Sd/-P.Venkatarama Reddi, J.

1999 OFFICER WORKING ON OD AS SECRETARY, A.P. HIGH COURT LEGAL SERVICES COMMITTEE, HYDERABAD AND MEMBER SECRETARY,A.P. STATE LEGAL SERVICES AUTHORITY FROM 20-11-1999 TO 06-11-2001.

2002 CHAIRMAN, INDUSTRIAL TRIBUNAL-II, HYDERABAD.

HIGH COURT REVIEW

PERIOD	QUANTITATIVELY	QUALITATIVELY
I PERIOD	a) Very Good	Satisfactory
	b) Very Good	Good
II PERIOD	Very Good	Good

Work and Conduct – Good; Sd/-T.Meena Kumari, J.
Work and Conduct – Good; Sd/-G.Bikshapathy, J.
Work – Good; Conduct – Good; Other remarks: Very hard working
and honest officer. Sd/-B.Sudershan Reddy,J.

Work and Conduct – Good; Sd/-Bilal Nazki, J.

2003 PRL.DISTRICT AND SESSIONS JUDGE, ANANTAPUR & R.R.DISTRICTS.

HIGH COURT REVIEW

PERIOD	QUANTITATIVELY	QUALITATIVELY
I PERIOD	a) Very Good	Good
	b) Very Good	Satisfactory
II PERIOD	Very Good	Satisfactory

Work – Very Good; Conduct –Satisfactory;
Sd/-T.Meena Kumari, J.
Work and Conduct – Satisfactory; Sd/-J.Chelameswar, J.

2004 PRL.DISTRICT AND SESSIONS JUDGE, RANGA REDDY DISTRICT.

HIGH COURT REVIEW

PERIOD	QUANTITATIVELY	QUALITATIVELY
I PERIOD	Very Good	Satisfactory”

From what has been reproduced above, it is clear that in a period of nine years preceding his compulsory retirement (the service record of those years was considered by the committee for assessing the petitioner for determining his continuity and utility in service), all the Judges who reviewed the petitioner’s performance, work and conduct rated him as ‘good officer’. In almost all these years, his work was quantitatively categorized as ‘very good’. Qualitatively, his work was rated as ‘good/satisfactory’. His integrity was always treated above board. In five years preceding his retirement, the work of the petitioner was quantitatively described as ‘very good’; qualitatively it was described as ‘satisfactory’ in the year 1998. For the next two years, he worked as Secretary, A.P. High Court Legal Services Committee. In 2002, he worked as Chairman, Industrial Tribunal-II, Hyderabad and his work was rated as ‘very good’ and ‘good’ both quantitatively and qualitatively. All the Judges described his work and conduct as ‘good’. One of the Hon’ble Judge remarked – “very hard working and honest officer”. In 2003 and 2004, his work was quantitatively rated as ‘very good’ and qualitatively as ‘good/satisfactory’.

The service profile of the petitioner also shows that during his career from 16-8-1976 to 31-7-2005, 18 complaints were received

against him and all were dropped or lodged or closed after scrutiny by the competent authorities. In none of the 18 complaints, the High Court found any substance, though, in two of the cases covered by files in RoC Nos.53 of 1986 and 520 of 1991, the officer was cautioned. For the sake of reference, the allegations contained in the complaints received against the petitioner and action taken thereon are reproduced hereunder:

1. In file RoC.No.206/79, three petitions received when the officer was working as Munsif Magistrate, Nizamabad were dealt with. The petitions made allegations of corruption, purchase of gas cylinder with 'chulla' costing Rs.2,000/- through the Sub-Inspector (or Circle Inspector Urban), Nizamabad and mutual understanding between the Sub-Inspector and the officer. The officer was alleged to be given much weight to Brahmin parties or Brahmin advocates and to be receiving recommendations from his villagers and relatives from the neighbouring native Taluq, Nirmal. He was alleged to be taking free supply of household articles from the Sub-Inspectors of Police to pass orders in their favour against his record. He was alleged to be getting bribes from the police and to have got supplies of all the articles for a party for 300 invitees on his marriage, by the police freely. He was alleged to be taking supply of ghee, butter, fuel wood, rice, pulses and other articles from Dichpally and Nizamabad Police respectively. He was alleged to be taking bribes through one of his relatives working at Nizamabad and one Mangal Singh, Advocate, Nizamabad. The remarks of the District Judge were called for and the District Judge, Nizamabad in his report dated 9/10-8-1979 stated that notices sent by registered post with acknowledgment due could not be served on the petitioners and that his discreet enquiries revealed that there is no truth in the allegations levelled against Sri P. Raghavender, then Munsif Magistrate, Nizamabad. Further action was dropped by the High Court treating the matter as closed.
2. In file RoC.No.221/79, a petition sent by one Kumar,

dated 18-5-1979 alleging that on 21-4-1979 the date of marriage of Sri P. Raghavender, all the Courts of Nizamabad remained closed and all the Judges, Government officials, merchants, business men including smugglers and owners of Matka company attended and the presentations given were worth not less than Rs.1,00,000/-. It was further alleged that with close links with police officials, the officer earned a lot. On this also, the report of the District Judge was called for and the District Judge, Nizamabad in his report dated 9/10-8-1979 stated that he could not serve notice on the complainant for want of sufficient address and that his personal enquiries revealed that there is no truth in the pseudonymous petition. The High Court directed the petition to be lodged.

3. In file RoC.No.64/80, a petition was sent by Rosaiah, Baliah and Lingam alleging caste bias, favouring Brahmins and grudge against harijans and all backward class people and Muslims, for the officer, apart from allegedly taking supplies of household articles from the police. It was further alleged that he was taking the car of Sri Ram Reddy, Advocate to go to places with his family and was playing cards in a club with high stakes and that people of Nirmal Taluq were doing 'pairvi' in cases. That petition was also lodged by the High Court, while it was proposed to transfer him on completion of three years during general transfers as the officer's native Taluq is very near Nizamabad.
4. The next petition in file RoC.No.53/86 was an anonymous complaint received in 1986 when the officer was working as Principal District Munsif, Rajahmundry alleging that he was not numbering fresh suits, accumulating to about 200. The report of the District Judge was called for and the District Judge, East Godavari at Rajahmundry in his report, dated 10-3-1986 referred to his surprise visit on 28-2-1989 finding that out of 951 complaints filed, 836 complaints were registered in 1985, leaving 115 complaints unregistered, out of which 14 complaints were with the Head Clerk for checking, 15 complaints were in return bundle and two complaints

were posted before the Bench for hearing, while the returned complaints for compliance of objections which were with the advocates, were 84. The learned District Judge found that the complaints could not be registered due to non-compliance with the objections taken by the Court and that there were no lapses on the part of the Head Clerk or the Principal District Munsif. He also referred to the remarks of the officer, which were submitted on being called for, denying the allegations and referring to the heavy work in his Court. The High Court considered any further action to be unnecessary, but cautioned the officer not to give scope for such lapses alleged against him on the anonymous petition, in future.

5. File RoC.No.184/88 is about the resolution of the Bar Association, Anantapur objecting to the remarks of the officer on 17-3-1988, while working as Additional Sub-Judge, Anantapur, that the advocates are irresponsible and that he has to remind them of their responsibilities. As there was no report from the District Judge about the incident, the resolution was directed by the High Court to be lodged.
6. A petition from Sri P. Bhaskara Rao, Advocate and party in person in O.S.No.103 of 1973 against the officer working as Principal District Munsif, Rajahmundry, dated 04-9-1985 was the subject of the file in RoC.No.874/88. It was alleged that the officer made uncalled for remarks about freedom fighters and dismissed O.S.No.103 of 1973 in spite of abundant evidence. Collusion between the revenue officials and the officer was alleged. The officer was sought to be made responsible for the loss of property and a departmental enquiry and punishment against him were requested to be taken. The High Court ordered that the officer was already transferred and the remarks were made in the judgment, which is a judicial act and it is open to the petitioner to seek further remedies, but no action need be taken on the petition.
7. When the officer was working as Subordinate Judge, Machilipatnam, a petition was received from Mandava Venkataratnam, dated 10-8-1991, which was the subject of

file in RoC.No.520/91. The petitioner alleged that no order was passed in his petition for appointment of a Receiver filed in February, 1991 in O.S.No.132 of 1990, which was heard on 19-6-1991, due to which the possibility of raising crops after agricultural season was lost. It was alleged that the officer was not pronouncing judgments in urgent matters also. The report of the District Judge was called for and the District Judge, Krishna in his report dated 28-01-1992 narrated the sequence of events in O.S.No.132 of 1990 and in I.A.No.169 of 1991. In I.A.No.169 of 1991, after hearing the petition on

19-6-1991, it was reopened on 12-7-1991 suo motu and was heard on 08-8-1991 and was posted to 03-9-1991 when orders were pronounced. The Receiver could not conduct auction of the leasehold rights for that year, as the transplantation season was over two months earlier. But, the leasehold rights of the house were successfully auctioned. The District Judge also referred to his enquiry with the officer who explained that due to pressure of work, the orders could not be pronounced immediately. The District Judge furnished the details of heavy pendency in the Court, due to which the delay appears to be unintended and unintentional on account of the pressure of work and due to the officer going on leave travel concession during that period. The integrity or motives of the officer were not suspected. The High Court directed the officer to be more careful thereafter, after informing that the reopening of I.A.No.169 of 1991 suo motu resulted in bidders not coming forward, as the transplantation season was over two months earlier and that if only he had pronounced the orders on 12-7-1991, the parties would have not been subjected to financial loss and that his action, prima facie, appears to be without any justification and is suggestive of negligence.

8. In file RoC.No.382/95, a petition was sent by one Sri K. Rambabu, dated 29-6-1995 against the officer, then working as II Additional District Judge, Rajahmundry alleging caste bias and that the Public Prosecutor and Steno of the Court were acting as brokers for the officer,

which can be proved from the judgments in O.S.Nos.1/1990 and 1/1991. Allegations were made against the disposal of a bail application in Ravulapalem Income Tax case, panel sent by the officer for Government Pleaders, officer keeping his car in the shed of Sri Perayya Naidu, Advocate and different compensations being granted in similar cases under the Motor Vehicles Act. Remarks of the officer and report of the District Judge were called for and the officer denied the allegations and claimed ignorance of the caste of majority of the advocates. He explained his stand with reference to various allegations. The District Judge, East Godavari, Rajahmundry in his detailed report dated 20-10-1999 stated that he could not secure the presence of Sri K. Rambabu, as no notice could be served on him in spite of efforts. The learned District Judge had gone through the judgments in O.S.Nos.1/1990 and 1/1991, in which Brahmin advocates appeared on both sides and stated that as the officer and the Principal District Munsif were visiting Cosmopolitan Club to play shuttle badminton, the scope arose for making comments. The learned District Judge stated that there is no material to support the allegations. The High Court directed closure of the file while noting that there was no point in enquiring into the complaint after four years.

9. A petition in the name of Member of Bar Association, dated 23-5-1997 was the subject of file RoC.No.1018/1997 after the transfer of the officer from the Court of Additional District Judge, Mahaboobnagar alleging caste bias, purchase of several movable and immovable properties, movement in private vehicles without payment, misuse of Court telephone and Court van, delayed attendance to the Court, collection of money or articles from the Magistrates, calling a lady advocate to his house whenever his wife was not there etc. The Head Clerk, Ramachandrarao and Attender, Anand were stated to be his brokers. The High Court directed closure of the petition, as the allegations are vague and as the officer was transferred.

10. In RoC.No.1740/97, a petition by one M.M. Naidu, Advocate, dated 25-9-1997 was received alleging that Sri P. Raghavender as Additional District Judge, Mahaboobnagar received Rs.1,00,000/- to grant bail in a sensational murder case and secured a lorry without payment for his shift to Hyderabad and purchased silk sarees without payment at Gadwal and secured several loans which he did not repay. The other allegations were similar to those made in Item 9 above and the petition was directed to be lodged by the High Court, as there was no verifiable material.
11. In RoC.No.412/2002, one A.V. Sobhanadri Swamy in a petition dated 07-3-2002 wanted the officer working as Member Secretary, Legal Services Authority to be tried and sought a permission letter. As nothing could be culled out from the petition, it was directed to be filed.
12. In RoC.No.925/2003, a petition was sent by one B.C. Lakshmananna and three others against the panel of five advocates for the post of Government Pleader, Anantapur sent by the officer after receipt of his transfer orders from the post of Principal District Judge, Anantapur. The panel was said to be not according to rules and the petition was directed to be filed.
13. An anonymous petition against the officer working as Principal District and Sessions Judge, Ranga Reddy was the subject matter of file RoC.No.1260/2004. It was alleged that the officer never maintained punctuality, took long time to finish the call work, gave unnecessary adjournments though the counsel were ready, did not pronounce reserved orders in time, gave preference to lady advocates, applied for leave without prior intimation, preferred community advocates, disliked S.T. and S.C. advocates and chewed Goa Gutka in the Court. This petition was also directed to be filed by the High Court.
14. In RoC.No.1721/2004, a petition against Sri P. Raghavender and Sri K.V. Kishan Rao was sent alleging threats from them, by one Major Mrs.Lata Kakkar. The complainant appeared before the Registrar (Vigilance) on notice and she required certain records. In the meanwhile,

the District Judge, Ranga Reddy sent a report to the High Court about the vexatious conduct of the complainant. The High Court endorsed that there was no relevance of the files and directed the petition to be filed. When again a petition was received, the Registrar (Judicial) was directed to issue notice to the complainant to appear before the First Court treating the case as Contempt Case SR.

15. In file RoC.No.1893/2004, an anonymous complaint forwarded by the Director General, ACB alleging that the District Judge, Ranga Reddy took Rs.25,000/- bribe from one V.V.Kishen, Advocate for dismissal of dowry harassment death case, was directed to be filed.
16. In RoC.No.147/2005, a petition sent by Sri B. Ram Chandra Reddy, Advocate, dated 25-02-2005 was dealt with, in which it was alleged that Rs.90,000/- worth fixed deposit receipts deposited by sureties were missing. Sri P. Raghavender, District Judge submitted his report to the High Court on being called for, explaining in detail the action taken in respect of two irregularities in the matter of return and encashment of fixed deposit receipts brought to his notice and the report was accepted by the High Court.
17. In RoC.No.536/2005, an anonymous petition alleging delays in delivering judgments and orders was directed to be filed by the High Court.
18. In RoC.No.984/2005, a petition dated 13-6-2005 by B. Karunakar and V. Bhaskararao alleging irregularities, favouritism and partisanship in the process of selection for the posts of attenders, was dealt with. Explanation of the officer was called for and in the meanwhile, the officer retired from service on 31-7-2005.”

It is thus clear that in his career spread over more than 29 years from 16-8-1976 to 31-7-2005, the petitioner's work and conduct was always treated as 'very good', 'good' or satisfactory, both quantitatively or qualitatively. During these long years, his integrity was never doubted. Out of the 18 complains received during this period, the petitioner was cautioned in two cases. In ten instances,

the High Court directed the complaints to be lodged or filed or dropped further action without calling for any remarks from the officer or his immediate superior. In four cases, the remarks/reports of the concerned District Judges were called for and all of them supported the officer. Only in one case, the remarks of the officer were also called for along with the remarks of the District Judge and that file was closed. In two instances, the District Judge has brought the allegations to the notice of the officer and intimated the High Court about accepting his version. In two other cases, the reports of the officer himself as District Judge were considered and accepted by the High Court. The last of the complaints in Roc.No.984/2005 could not be the subject of any final consideration by the High Court, as the officer retired on 31-7-2005 and this complaint was not before the Administrative Committee, which considered and decided not to continue in service beyond the age of 58 years.

In our considered view, on a fair and objective evaluation of the service record of the petitioner, it could not have been possible for the Administrative Committee of the High Court to form an opinion that he is not fit to be continued in service up to the normal age of superannuation. While making the above observation, we have kept in view the fact that in a career spanning over 29 years, the record of the officer has remained unblemished, inasmuch as nobody ever doubted his integrity or cast adverse reflection of his honesty. Therefore, even by applying the criteria of subjective satisfaction, there is no escape from the conclusion that the recommendations made by the committee for compulsory retirement of the petitioner at the age of 58 years are liable to be characterized as arbitrary and the consequential G.Os. issued by the State Government retiring the petitioner are liable to be quashed.

While disposing of representation dated 1-3-2006 made by the petitioner for reconsideration of his compulsory retirement, the Committee of Judges, in its meeting held on 3-4-2006 passed the following resolution:

“Considered the representation of Sri P. Raghavender, formerly Principal District and Sessions Judge, Ranga Reddy District filed in accordance with the directions given in WPMP No.35262 of 2005 in W.P.No.16779 of 2005, the service records of the officer for the last three years, it is observed that under the qualitative assessment he has earned two remarks of “satisfactory” and one remark of “good”. We also observed that there is an order passed by the High Court in which the court observed that the Officer was simply confirming the office objections instead of rectifying the mistakes committed by the office. The Court also observed that “under his administration, the functioning of Ranga Reddy District Court administration will further deteriorate”. The Court made this opinion on 07-04-2005. We also observed that the service record of the officer discloses that during his whole service career continuously complaints of misconduct were received against him.

In view of such a record, the Committee is of the opinion that the decision of the Committee dated 27-6-2005 needs no re-consideration and resolved to reject the representation filed by the officer.”

The aforementioned decision taken on the representation made by the petitioner also suffers from the same infirmity with which the decision to retire him suffers. While rejecting his representation, the Committee directed its attention to only previous three years record and observed that the quantitative assessment of his work in two years is ‘satisfactory’ and ‘good’ in one year. However, a cursory reading of the entries recorded in the personal file of the petitioner shows that the observations of the committee do not reflect the true picture of the record. In 2002, his work was quantitatively rated as

‘very good’ for first as well as second period. Qualitatively it was rated as ‘satisfactory/good’ in the first period of that year and ‘good’ in the second period of that year. All the four Judges who assessed him rated the work and conduct of the petitioner as ‘good’. One of them, namely, B. Sudershan Reddy, J (as His Lordship then was) made the following additional remarks:

“very hard working and honest officer”

In the year 2003, his work was quantitatively rated as ‘very good’ (both the periods). It was qualitatively rated as ‘good/satisfactory’ in the first period and ‘satisfactory’ in the second period. Out of the two Judges who assessed his work, one rated him as ‘very good’ and the other rated as ‘satisfactory’. Both the Judges rated his conduct as ‘satisfactory’. In the first period of 2004, his work has been quantitatively rated as ‘very good’ and qualitatively as ‘satisfactory’. The assessment of second period of 2004 was not placed before the committee when it decided to recommend his compulsory retirement.

The observations made by the committee that there were complaints of misconduct during his service career also do not reflect the true picture of the petitioner’s service record because, as mentioned above, all the complaints were scrutinized by the competent authorities (including the Chief Justice in some cases) and were filed/lodged. Only in two cases he was cautioned. In none of the cases any finding was recorded casting adverse reflection on the work, conduct, performance or integrity of the petitioner. It is beyond comprehension as to how the complaints, which have been filed by the competent authority, could be relied by the Committee of Judges for reiterating the earlier decision to compulsorily retire the petitioner at the age of 58 yrs.

The reference made in the Minutes of the meeting of Committee of Judges held on 3-4-2006 to an order passed by the High Court in which some adverse observations appear to have been made on the administrative capability of the petitioner is not supported by the record produced by the learned counsel for the High Court. The record produced by the learned counsel for the High Court shows that Civil Revision Petition No.1741 of 2005 filed by Rajendra Kankaria against Cyber Enclave Welfare Association and two others questioning an order made by the petitioner in his capacity as District Judge, Ranga Reddy District was allowed by Hon'ble Shri Justice V. Eswaraiah, vide his order dated 7-4-2005. The learned Judge noted that the objection raised by the office of the District Judge on the O.P. filed by the petitioner against the layout prepared by respondent Nos.2 and 3 were upheld by the learned District Judge without considering the explanation submitted by the petitioner. He accordingly set aside the order of the District Judge by observing that the same was erroneous and legally unsustainable. This is evinced from the last two paragraphs of order dated 7-4-2005, which read as under:

"It is stated that the petitioner has chosen to file O.P. before the District Court, Ranga Reddy district, but the office of the District Judge raised certain objections as to the very maintainability of the O.P. under Section 23 of the Act. The petitioner, after complying with several objections, stated that the O.P. is maintainable under Section 23 of the Act. But the learned Judge, without perusing the averments of the O.P. and without considering the explanation submitted to the said objection, quoted certain provisions of the A.P. Cooperative Societies Act, which has no application at all to the facts of the case and erroneously upheld the objection of the office and stated that the O.P. is not maintainable and returned the same.

I am of the opinion that the order of the District Judge

dated 17-03-2005, erroneous, illegal and unsustainable.”

In the order passed by him, the learned Single Judge did not cast any adverse reflection on the administrative capability of the petitioner, but in the opinion form he recorded observations, which finds mention in the proceedings of the Committee of Judges held on 3-4-2006. It is also borne out from the record that the opinion expressed by the learned Single Judge did not form part of the original agenda prepared for consideration by the Committee of Judges on 27-6-2005. The same was subsequently added as additional material. From the record it is not clear whether the observations contained in the opinion form were brought to the notice of the petitioner and he was given a chance to explain his position. Therefore, the same could not be made basis for confirming the earlier decision to compulsorily retire him from service. In any case, some deficiency in his administrative capacity during the particular year cannot be made basis for washing off his good record of 29 years and those remarks cannot be made basis for sustaining the action and order impugned in this petition.

In the result, the writ petition is allowed. The recommendations made by the Administrative Committee and G.O.Ms.No.99 and 103 dated 25-7-2005 and 30-7-2005 are declared illegal and quashed. The respondents are directed to reinstate the petitioner and give him all consequential benefits.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

August 17, 2006

svs

Note:

Registry is requested to mark L.R. copy.

(By order)

svs

PS to HCJ

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- [\[1\]](#) AIR 1981 SC 70
 - [\[2\]](#) AIR 1981 SC 594
 - [\[3\]](#) AIR 1988 SC 1388
 - [\[4\]](#) (2000) 6 SCC 332
 - [\[5\]](#) AIR 1997 SC 2631
 - [\[6\]](#) AIR 1979 SC 193
 - [\[7\]](#) (1978) 2 SCC 102
 - [\[8\]](#) (2003) 8 SCC 117
 - [\[9\]](#) (1992) 1 SCC 119
 - [\[10\]](#) (1993) 4 SCC 288
 - [\[11\]](#) (2001) 2 SCC 305
 - [\[12\]](#) 1999 (6) ALD 586
 - [\[13\]](#) (1992) 2 SCC 299
 - [\[14\]](#) (1992) 2 SCC 317
 - [\[15\]](#) (2001) 3 SCC 314
 - [\[16\]](#) (2005) 1 SCC 132